

# Attachment 1

Susan Williams Reeves

attorney at law

Facsimile: 205-322-7479

714 South 29th Street  
Birmingham AL 35233-2845  
205-322-6631

December 19, 2005

By E-MAIL only: [pclark@balch.com](mailto:pclark@balch.com)

Paul A. Clark, Esq.

Balch & Bingham LLP

105 Tallapoosa Street

Suite 200

Montgomery AL 36104-2549

By Facsimile only: 205- 967-2380

Laura C. Nettles, Esq.

Matthew P. Teague, Esq.

Lloyd, Gray & Whitehead, P.C.

2501 20<sup>th</sup> Place South

Suite 300

Birmingham AL 35223

Re: *Crews v NBOA, etal CV-05-2232*

Dear Counsel:

I have been expecting a response to the Complaint and now answers from each defendant in this case are overdue. Unless there are answers for each defendant filed immediately, I will move for a default judgment as soon as tomorrow as to each non-answering defendant.

Sincerely,

Susan Williams Reeves

SWR/bh

# Attachment 2

**Susan Williams Reeves**

attorney at law

Facsimile: 205-322-7479

714 South 29th Street  
Birmingham AL 35233-2845  
205-322-6631

December 21, 2005

Paul A. Clark, Esq. BY E-MAIL ONLY  
Balch & Bingham LLP  
105 Tallapoosa Street  
Suite 200  
Montgomery AL 36104-2549

Laura C. Nettles, Esq. BY E-MAIL ONLY  
Matthew P. Teague, Esq.  
Lloyd, Gray & Whitehead, P.C.  
2501 20<sup>th</sup> Place South  
Suite 300  
Birmingham AL 35223

Re: *Crews v NBOA, etal CV-05-2232*

Dear Counsel:

I would like to set up a meeting of the parties in order to prepare our Rule 16(b) report, that will enable the Court to issue its scheduling order. The Court's order will be due at least within 120 days after the service of the Complaint on the defendant, and as I write this, I calculate that it has been 101 days since service on the first Defendant. Please let me know a good time for you all for this meeting.

Sincerely,

Susan Williams Reeves

SWR/bh

# Attachment 3

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THE HELMSMAN YACHT POLICY

READ YOUR POLICY CAREFULLY.

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## THE HELMSMAN YACHT POLICY

The coverages included in this policy are shown on the Declarations Page. If any coverage described below does not appear on the Declarations Page, the coverage does not apply. These coverages are:

### PROPERTY COVERAGE:

Hull Coverage (Including **Tenders**)

Personal Property Coverage

Boat Trailer Coverage

Rental Reimbursement Coverage

Emergency Towing and Assistance

### PROTECTION AND INDEMNITY

### OIL POLLUTION LIABILITY

### LONGSHORE AND HARBOR WORKERS' COMPENSATION

### MEDICAL PAYMENTS

### UNINSURED AND UNDERINSURED BOATER

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Words and phrases that appear in **bold** or in "quotation marks" have special meanings. Refer to the Definitions at the end of this policy. Other words and phrases appear in 'single quotes': these are references to words or phrases that appear on the Declarations Page.

## USE OF YOUR YACHT

There are certain restrictions on the use of the insured yacht. If you violate any of these restrictions, coverage will be suspended until **you** are no longer in violation of these restrictions. We will not cover losses that occur while the insured yacht is being used for an illegal purpose or while coverage is suspended because **you** violated the restrictions outlined below.

These are the restrictions on the use of the insured **yacht**:

- I. The insured yacht must be used only for private pleasure purposes. It cannot be used for charter, hire, lease, or any other commercial use.
2. While afloat, the insured yacht must be used only within the navigating limits.
3. While on land, the insured yacht may be transported overland by a trailer. However, it may not be transported more than 350 total miles by a contract or common carrier.
4. If 'Lay up' is shown on the Declarations Page, during the lay-up period shown:
  - a. the insured yacht must be in a safe berth for storage;
  - b. if the Declarations Page indicates the **insured yacht** will be laid up ashore, the **insured yacht** may not be afloat: and
  - c. the insured yacht may not be operated except as required in order to change berths within the immediate berthing location. However, if you are required to move the insured **yacht** for the purpose of safety, repairs, alterations or for betterments and improvements, coverage will not be suspended.

## **PROPERTY COVERAGE**

### **VI. Coverage**

#### **A. Hull Coverage (Including **Tenders**)**

##### **1. Coverage**

We will pay for sudden accidental direct physical loss or damage to the **insured yacht unless:**

- a. the property is described under Property Not Covered in paragraph 2; or
- b. the cause of loss is described under Exclusions in paragraph 3.



## 2. Property Not Covered

Under Hull Coverage, we will not pay for loss or damage to dock boxes, moorings, cradles, wearing apparel, cameras, fishing equipment, diving equipment, fuel, provisions, portable radios and other portable audio

equipment, portable cellular telephones, water skis and other sporting equipment, or personal watercraft such as jet skis or wave runners.

This provision does not apply to marine electronics.

### 3. Exclusions . The following apply in addition to the GENERAL EXCLUSIONS:

We will not pay for loss, damage or expense caused by or resulting from:

- a. wear and tear, gradual deterioration, inherent vice, electrolysis, marring, denting, scratching, weathering, osmosis or blistering of fiberglass, resin or gelcoat or willful misconduct of an insured;
- b. failure to maintain the insured yacht (including its machinery and equipment) in good condition so that the insured yacht cannot be damaged by ordinary weather or water conditions or the rigors of normal use;
- c. manufacturer's defects or defects in design.

However, if the loss or damage has not resulted from the negligence of any insured, this exclusion does not apply to loss, damage or expense directly caused by explosion, bursting of boilers, breakage of shafts or any latent defect in the hull or machinery (excluding the cost and expenses of replacing or renewing the defective part);

## B. Personal Property Coverage

### 1. Coverage

We will pay for sudden accidental direct physical loss or damage to personal effects, clothing and sports equipment belonging to you or members of your family while these items are on board an insured yacht or are being loaded or unloaded. You may also apply this same coverage to the same type of property of your guests and unpaid crew members. We will pay for loss to such property caused by or resulting from any cause of loss unless:

- a. the property is described under Property Not Covered in paragraph 2; or
- b. the cause of loss is described under Exclusions in paragraph 3.

## 2. Property Not Covered

Under Personal Property Coverage, we do not cover:

- a. accounts, bills, money, traveler's checks, or any other valuable papers or documents;
- b. jewelry, watches or furs;
- c. household furniture, animals, or merchandise for sale or exhibition;
- d. watercraft including personal watercraft such as jet skis or wave runners; and
- e. property which you acquired primarily for use on an insured yacht which is covered under Hull Coverage;
- f. dock boxes, moorings or cradles.

### 3. Exclusions . The following apply in addition to the GENERAL EXCLUSIONS:

We will not pay for loss, damage or expense caused by or resulting from:

- a. wear and tear, gradual deterioration, moths, vermin or inherent vice;
- b. mechanical or electrical breakdown, unless caused by lightning; or
- c. mysterious disappearance or unexplained loss of any kind.

## C. Boat Trailer Coverage

### 1. Coverage

We will pay for sudden direct accidental physical loss or damage to the boat trailer described on the Declarations Page unless the cause of loss is described under Exclusions in paragraph 2.

### 2. Exclusions . The following apply in addition to the GENERAL EXCLUSIONS:

We will not pay for loss, damage or expense caused by or resulting from:

- a. wear and tear, gradual deterioration or inherent vice;
- b. mechanical breakdown.

## D. Rental Reimbursement Coverage

## I. Coverage

If the insured yacht is damaged by a covered cause of loss, we will reimburse you for the reasonable expenses you incur to charter or rent a replacement yacht. We will only reimburse you if the replacement yacht is

similar to the insured **yacht** and has a rated speed not in excess of **45** miles per hour. We will only reimburse **you**:

- a. during **the repair period**;
  - b. if the **repair period** is longer than 2 days; and
  - c. for expenses you incur after the first 2 days of the **repair period**.
2. Exclusions. The following apply in addition to the GENERAL EXCLUSIONS:

**We** will not pay for hotels, motels or any other lodging ashore, rental cars or other ground transportation, airfare, meals, groceries or food.

## E. Emergency Towing and Assistance Coverage

**We** will reimburse you for the reasonable expenses you incur if the insured yacht becomes disabled and you cannot get voluntary help. We will pay only for expenses incurred for the following emergency services:

- a. towing to the nearest place where necessary repairs can be made;
- b. delivery of fuel or repair parts to the site of disablement (excluding the cost of items delivered); or
- c. the cost of emergency labor performed at the site of disablement.

If a boat trailer is described on the Declarations Page, this coverage also applies to such expenses incurred because the trailer is disabled. However, we will not pay for delivery of fuel to any conveyance transporting the **insured yacht** if the reason the boat trailer is disabled is because the conveyance is out of fuel.

## II. Loss Conditions

## A. Hull Coverage

## Agreed Value

We agreed with you that the value of the insured yacht is the Limit of Insurance shown on the Declarations Page. We will pay you the 'Limit of Insurance' in the event of loss or damage to the insured yacht, which we determine to be a total loss or a constructive total loss.

## 2. Replacement Cost

We will pay for partial loss or damage to the insured yacht and all losses to the tender, personal property and boat trailers, on a Replacement Cost Basis which is the least of the following amounts:

- a. the 'Limit of Insurance';
- b. the replacement cost of the lost or damaged property;
- c. the cost of reasonably restoring the lost or damaged property with other new property:
  - i. of comparable material and quality; and
  - ii. used for the same purpose; or
- d. the cost of replacing the lost or damaged property with substantially identical property.

## 3. Depreciation

We will pay for repairs to or replacement of lost or damaged property without deduction for depreciation, except for;

- a. sails and protective covers of any type; b personal property;
- c boat trailers;
- d. outboard motors; and
- e. outdrive units which are over five (5) years old.

Loss or damage to this property will be adjusted on **an actual cash value basis**.

#### 4. Repair Clause

If the hull of an **insured yacht** is molded, made of plywood, plastic or fiberglass and there is a loss to the **insured yacht** under this Policy, we pay for repairs that are made in accordance with the manufacturer's specifications or accepted repair practices.

#### 5. Unrepaired Damage

If the insured **yacht** was damaged before the loss, we will not pay to repair the prior damage. In the event of a total loss or a **constructive total loss**, the amount we will pay will be reduced by the cost that would have been incurred had the prior damage been repaired.

#### B. Limits of Insurance

##### Hull, Personal Property, Boat Trailer and Rental Reimbursement Coverage

The most we will pay for a covered loss caused by or resulting from a single occurrence is the limit of insurance. The limits of insurance are as follows:

- a. The limit of insurance applicable to the insured yacht is the 'Limit of Insurance' shown on the Declarations Page for 'Hull'.
- b. The limit of insurance applicable to any newly acquired yacht is 150% of the 'Limit of Insurance' shown on the Declarations Page for 'Hull'.
- c. Subject to a. or b. above, whichever applies, the limit of insurance applicable to property temporarily removed from the **insured yacht** while on shore is 50% of the 'Limit of Insurance' shown on the Declarations Page for 'Hull'. This amount is included in the amount determined by a. or b. above and not in addition to such amount.
- d. If a separate limit of insurance is shown on the Declarations Page for a **tender**, this is the limit of insurance for the tender described on the Declarations Page. This amount is in addition to and not included in the limit of insurance applicable to the **insured yacht**. **Loss or** damage to any **tender** not described on the Declarations Page with a separate limit of insurance will be adjusted as a partial loss to the insured yacht and subject to a. b. and c. above.
- e. The limit of insurance applicable to the Personal Property Coverage is the 'Limit of Insurance' shown on the Declarations Page for 'Personal Property'.
- f. If you have coverage for a boat trailer, the limit of insurance is the 'Limit of Insurance' shown on the Declarations Page for 'Boat Trailer'.
- g. If you have coverage for a Rental Reimbursement, the limit of insurance is the 'Limit of Insurance' shown on the Declarations Page for 'Rental Reimbursement'.

The amount we pay for a covered loss caused by or resulting from one **occurrence** will not effect the amount we pay for any subsequent occurrence.

#### 2. Emergency Towing and Assistance

- a. The most we will pay for expenses incurred during the policy period under Emergency Towing and Assistance is the 'Aggregate Limit' shown on the Declarations Page for 'Emergency Towing and Assistance'.
- b. Subject to a. above, the most we will pay under expenses incurred as a result of a single occurrence for Emergency Towing and Assistance is the 'Occurrence Limit' shown on the Declarations Page for 'Emergency Towing and Assistance'.

#### C. Deductibles

We will not pay for loss, damage or expense for any one occurrence until the amount of the loss, damage or expense exceeds the deductible. We will then pay the amount of loss, damage or expense in excess of the deductible, up to the applicable limit of insurance. In the event that loss occurs as a result of one occurrence and the loss would require the application of more than one deductible, only the highest deductible shall be applied to the loss.

applied to the loss. However, this provision does not apply to a total loss or constructive total loss to a portion of an **insured yacht such as its tender**, machinery or equipment, sails or spars

D. Abandonment

We are not obligated to accept any property you abandon, nor are we obligated to pay any storage fees incurred because you abandoned any property to any other person or organization.

E. Payment of Loss

We will pay losses within 30 days after the earliest of the following:

1. we reach agreement with you;
2. final judgment is rendered in a court of law; or
3. an appraisal award is filed with us.

F. Salvage

Any recovery or salvage on a loss will accrue entirely to our benefit until the sum paid by us has been made up.

G. Protect and Recover

In the event of a covered loss to property, you must protect the property from further loss and make every effort to recover it. We will pay the reasonable costs you incur under this condition in addition to any other payments we make for loss or damage under Property Coverage, but the amount we pay under this provision will not exceed the 'Limit of Insurance' shown on the Declarations Page for 'Hull'.

H. Loss Payable Conditions

For covered property in which both you and a 'Loss Payee' shown in the Declarations Page have an insurable interest, we will:

1. adjust losses with you; and
2. pay any claim for loss or damage jointly to you and the 'Loss Payee', as interest may appear.

III. Other Property Conditions

A. No Benefits to Others

This insurance shall not directly or indirectly benefit any carrier or other bailee.

B. Transfer of Interest

We do not provide any coverage under this policy if you sell, assign, transfer or pledge the insured property unless prior written consent has been obtained from us.

IV. Additional Definition

The following additional definition applies to this coverage:

Repair Period as used in this coverage means the period of time that:

1. begins with the date of the direct physical loss or damage to the insured yacht; and
2. ends on the date when the insured yacht should be repaired, rebuilt or replaced with reasonable speed and similar quantity.

The expiration date of this policy will not cut short the period of repair.

PROTECTION AND INDEMNITY

I. Coverage

A. We will pay sums which:

1. an insured becomes legally obligated to pay as a result of ownership, operation, or maintenance of an insured yacht; or
2. you become legally obligated to pay as a result of the operation of a nonowned yacht due to:

a. Property damage:

- i. loss or damage to any other ship or vessel or other property caused by an insured yacht or nonowned yacht;
- ii. any attempted or actual raising, removal or destruction of the wreck of an insured yacht, a nonowned yacht or the cargo in or on an Insured yacht or nonowned yacht;

- iii. failure to raise, remove or destroy the wreck of an insured yacht or nonowned yacht; or
  - iv. to a nonowned yacht.
- b. Personal Injury:
  - i. Loss of life or bodily injury; or
  - ii. Payments made on account of life salvage.

With respect to a paid captain or paid crew member, this includes the transportation, wages, maintenance and cure provisions of general maritime law, including Jones Act.

**B. Damage to Property of Others While Racing**

We will pay sums for which the insured becomes responsible by reason of loss or damage to any other ship or vessel or other property caused by the insured **yacht** while competing in or preparing for any sailboat race organized by any recognized yacht racing association or club. We will determine such responsibility based on the racing rules of the United States Sailing Association or any successor organization. The amount we will pay under this provision will not increase the limit of insurance.

**C. Defense**

We have the right and duty to defend any suit to which this insurance applies. But we may investigate and settle any claim or suit at our discretion. Our duty to defend any claims or suit ends when the amount we pay for damages resulting from the occurrence equals the limit of insurance.

**D. Release Bonds**

If the insured yacht is arrested, confiscated, or detained because of injury or damage to which this coverage applies, we will pay the cost of bond to release the insured yacht. The amount we pay for this bond will not increase the limit of insurance.

**E. Exclusions - The following apply in addition to the GENERAL EXCLUSIONS:**

Insurance under Protection and Indemnity does not apply to:

1. Intentional Injury or Damage
 

bodily injury or property damage expected or intended from the standpoint of the insured. This exclusion does not apply to **bodily** injury resulting from the use of reasonable force to protect persons or property.
2. Transportation
 

bodily injury or property damage arising out of the transportation of the insured yacht or a nonowned yacht on land.
3. Assumption of Liability:
 

any liability assumed by you under any contract or agreement (other than liability that you would have in the absence of the contract or agreement). However, prior to a loss or damage, you may waive your rights of recovery against another party by signing hold harmless agreements that are included in:

  - a. registration forms for sailboat races; or
  - b. storage or slip rental contracts;

in connection with the ownership of an insured yacht.
4. Fines Against You
 

any fine or other penalty imposed against you by any government unit.
5. Personal Watercraft
 

bodily injury or property **damage** arising out of the ownership, maintenance or use of personal watercraft, such as jet skis or wave runners.

6. Workers' Compensation and Similar Laws  
any obligation of the insured under a workers compensation, disability benefits or unemployment compensation law or any similar law.
7. Master or Member of Crew  
With respect to bodily injury to a master or member of the crew of any vessel:
  - a. any obligation to pay punitive or exemplary damages because of bodily injury to an employee who is employed in violation of the law.
  - b. bodily injury to an employee while employed in violation of any law with your knowledge.

- c. damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any **employee**, or any personnel practices, policies, acts or omissions;
  - d. bodily injury to any person subject to the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950), the Nonappropriated Fund Instrumentality's Act (5 USC Sections 8 171-8173), the Outer Continental Shelf Lands Act (43 USC Sections 1331-1356), the Defense Base Act (42 USC Sections 1651-1654), the Federal Coal Mine Health and Safety Act of 1969 (30 USC Sections 901-942), any other federal workers' or workmen's compensation law or other federal occupational disease law, or any amendments to these laws;
  - e. bodily **injury** to any person subject to the Federal Employers' Liability Act (45 USC Sections 5 1-60);
  - f. any obligation to pay fines or penalties imposed for violation of federal or state law; or
  - g. damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872) or under any other federal law awarding damages for violation of those laws or regulations issued thereunder or any amendments to those laws.
- 8. Oil Pollution Liability
  - any liability covered or excluded under the "Oil Pollution Liability" section of this policy.

## II. Limit of Insurance

**We** will pay no more than the applicable limit of insurance for all damages, losses or release bonds resulting from any occurrence. This is the most **we** will pay regardless of the number of insured or boats involved, claims made, release bonds, insured yachts, nonowned yachts or premiums shown on the Declarations Page.

The limit of insurance shown on the Declarations Page for 'Hull' is the limit of insurance applicable to property damage to a nonowned yacht.

- 2. The limit of insurance shown on the Declarations Page for 'Protection and Indemnity' is the limit of insurance applicable to all other losses under this coverage.

## OIL POLLUTION LIABILITY

### Coverage

A. We will pay the reasonable cost and expenses you incur arising from the unintentional spillage of a contaminant from an insured yacht or nonowned yacht, subject to the terms and conditions of this policy. Coverage under this section is provided for:

- 1. the sums which you are legally liable to pay as a result of Property Damage or **Bodily Injury** arising out of a **oil pollution incident**;
- 2. the reasonable costs directly associated with the actual clean-up of an **oil pollution incident**;
- 3. the reasonable cost or expenses legally imposed upon you by those government authorities assisting or monitoring an oil pollution incident;



4. administrative charges and civil expenses levied against you by a judiciary body as a result of an oil pollution **incident**;

5. the reasonable costs and expenses to defend you against legal action from an **oil pollution incident**.

B. This coverage will not apply if you or any insured refuses or knowingly fails:

1. to report the incident giving rise to liability as required by law(s) and you or any insured knows or has reason to know of the **oil pollution incident**; or

2. to provide all reasonable cooperation and assistance with containment and clean-up operations as is required by law or by someone acting under their legal authority.

C. Defense

We have the right and duty to defend any suit to which this insurance applies. But **we** may investigate and settle any claim or suit at **our** discretion. **Our** duty to defend any claims or suit ends when the amount **we** pay for damages or expense resulting from the **occurrence** equals the limit of insurance.

D. Exclusions - The following apply in addition to the GENERAL EXCLUSIONS:

Insurance under Oil Pollution Liability does not apply to:

1. liability which has been assumed by you or any insured under contract or agreement;
2. liability for an incident that is caused by or resulting from any intentional act or willful misconduct by you or any insured;
3. any claim for punitive damages, or fine, penalty or cost of defense arising out of a criminal violation;
4. any assessment of liability for natural resource damage unless legal action commences within one (1) year of the incident.

## II. Limit of Insurance

We will pay no more than the applicable limit of insurance for all damages or expenses resulting from any occurrence. This is the most we will pay regardless of the number of insured or boats involved, claims made, insured yachts, nonowned yachts, or premiums shown on the Declarations Page.

## III. Additional Definitions

The following additional definitions apply to this coverage:

**Oil Pollution Incident** as used in this coverage means the sudden, accidental and unexpected emission, discharge, release, leakage, escape or spillage of a contaminant from an insured yacht or nonowned yacht in an accident that is specific in place and time within the policy period:

Contaminant means any petroleum product, chemical, lubricant, or solvent normally associated with the use and operation of a yacht.

## LONGSHORE AND HARBOR WORKERS' COMPENSATION

If 'Longshore and Harbor Workers' Compensation' is listed on the Declarations Page, the following applies:

We will cover any compensation payments you are responsible for under the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950) and any amendments to this act, as long as your responsibility arises from your ownership or use of an insured yacht. We will comply with all the provisions of this Act, and with any rules, regulations, orders and decisions of the Office of Workers' Compensation Programs of the US Department of Labor.

## MEDICAL PAYMENTS

### Coverage

#### A. Insuring Agreement

- I. **We** will pay for medical expenses as described below for bodily injury caused by an accident that occurs:
  - a. during the policy period;
  - b. in, upon, during boarding, or leaving an insured yacht; provided that:
    - a. the expenses are incurred and reported to us within one year of the date of the accident.
    - b. the injured person submits to examination, at our expense, by physicians of our choice as often as **we** reasonably require.
2. **We** will make these payments regardless of fault. **We** will pay reasonable expenses for:
  - a. first aid at the time of the accident;
  - b. necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
  - c. necessary ambulance, hospital, professional nursing and funeral services.
- B. Exclusions - The following apply in addition to the GENERAL EXCLUSIONS:

We will not pay expenses for bodily injury:

1. to a person, whether or not an employee of any insured, if benefits of the bodily injury are payable or must be provided under workers compensation, disability benefits law, or similar law.
2. to a person hired to work for or on behalf of any insured.
3. to anyone who is a trespasser.

4. arising out of any responsibility for payment assumed by you under contract or agreement. This exclusion does not apply to any responsibility you would have in the absence of the contract or agreement.

## II. Limit of Insurance

The limit of insurance shown in the Declarations Page for 'Medical Payments' is the total amount we will pay for all expenses resulting from any one **occurrence** incurred by any one person.

## III. Loss Conditions

Coverage for Medical Payments is subject to the following conditions:

### A. Medical and Other Reports

Each injured person, or someone on behalf of the injured person, shall:

1. as soon as practicable, give to us all information pertaining to the accident and injury; and
2. give us authorization to obtain pertinent medical reports and copies of these reports.

### B. Proof and Payment of Claim:

When requested by us, the person seeking payment, the injured person or someone on their behalf must file a written, sworn proof of loss with us.

1. This proof of loss must include:
  - a. the name and address of each person and organization performing services which are covered under the Medical Payments Insurance;
  - b. the nature, extent and date of these services;
  - c. itemized charges, and any amounts already paid.
2. This proof of loss must be filed:
  - a. as soon as reasonably possible after completion of services, or
  - b. within one (1) year of the date of the accident, whichever of the above occurs first.

## UNINSURED AND UNDERINSURED BOATER

### Coverage

#### A. Insuring Agreement

1. We will pay all sums a **covered person** is legally entitled to recover as damages from the owner or operator of an uninsured or **underinsured boat** that is not an **insured yacht or a nonowned yacht**. The damages must result from bodily injury sustained by the **covered person** caused by an occurrence. The owner's or operator's liability for these damages must result from the ownership, maintenance or use of the uninsured or underinsured boat that is not an insured yacht or a nonowned yacht.
2. If an underinsured boat causes the bodily injury, we will pay only after all other liability bonds or policies have been exhausted by judgments or payments.

#### B. Exclusions - The following apply in addition to the GENERAL

EXCLUSIONS:

Insurance under this section does not apply:

1. to any claim settled without **our consent**;
2. to damages because of bodily injury to any person using a boat without a reasonable belief that the person is entitled to do so; or
3. directly or indirectly to benefit any insurer or self-insurer under any workers' compensation, disability benefits law or any similar law.
4. to any damages because of bodily injury to any person arising out of the transportation of an uninsured or **underinsured boat** on land.

II. Limit of Insurance

The limit of insurance shown in the Declarations Page for 'Uninsured and Underinsured Boater' is the total amount we will pay for all damages resulting from any one occurrence. This is the most **we** will pay regardless of the number of **insured yachts, covered persons**, premiums paid, claims made or boats involved in the accident.

Any amount payable under this coverage shall be reduced by all sums paid by or for anyone who is legally responsible, including all sums paid under any other coverage of this policy. Any sums paid under this coverage will reduce any amount an insured is entitled to recover under 'Protection and Indemnity'.

### III. Additional Definitions

The following additional definitions apply to this coverage:

Covered **Person** as used in this coverage means:

1. **You** or any family member.
2. Any other person occupying an insured yacht.
3. Anyone entitled to recover damages because of bodily injury sustained by a person described in 1. or 2. above.

However, a **covered person does not include** you or a family member, while occupying or struck by any boat that is not an insured yacht but owned by you or any family member.

Underinsured boat means a waterborne vehicle of any type for which the sum of all liability bonds or policies at the time of the accident provides limits:

1. less than the limit of this coverage; or
2. that are reduced by payments to others who are not covered persons under this coverage who are injured in the accident such that the remaining limits available are less than the amount of this coverage.

An underinsured boat does not include any boat or equipment:

1. Owned or furnished or available for the regular use of you or any family member, or
2. owned by any governmental unit or agency.

Uninsured boat means a waterborne vehicle of any type:

1. to which no bodily injury bond or policy applies at the time of the accident.
2. which is a boat whose operator or owner cannot be identified and which hits:
  - a. You or any family member;
  - b. A boat you or any family members are occupying; or
  - c. An insured yacht.

An uninsured boat does not include any boat or equipment:

1. Owned or furnished or available for the regular use of you or any family member, or
2. owned by any governmental unit or agency.

Uninsured or underinsured boat means a boat that is either an uninsured boat or an underinsured boat.

### GENERAL EXCLUSIONS

**These exclusions apply in addition to any exclusion applicable to a specific coverage or group of coverages:**

No coverage is provided under this policy for loss or damage, liabilities incurred by any

person, injury or damages or  
expenses of any type for loss caused by, resulting from or arising out of:

### **Nuclear Exclusion**

nuclear incidents, reaction, radiation, or any radioactive contamination.

### **II. War Exclusion**

war or any warlike operation. This includes declared and undeclared wars, civil wars, revolutions or any civil unrest.

### **III. Capture, Seizure, Requisition or Detainment**

the lawful or unlawful capture, seizure, requisition or detainment of **your insured yacht** by a civil authority or an attempt to capture, seize, requisition or detain **your insured yacht by a civil authority**.

## **GENERAL CONDITIONS**

**These conditions apply in addition to any condition applicable to a specific coverage or group of coverages:**

### **Misrepresentation or Fraud**

All insurance provided by this Policy shall be void if you intentionally conceal or misrepresent any material fact or circumstances concerning this insurance whether before or after a loss.

## II. Notice of Cancellation

You may cancel this policy by returning it to us or our authorized agent, or by advising us or our authorized agent in writing, stating the future date you want the policy to be cancelled. We may cancel this policy by delivering or mailing to you at your last address shown in our records, written notice stating when, not less 10 days after mailing, the policy will be cancelled. Delivery or mailing of this notice to you shall be sufficient proof that notice of cancellation was given. The date of the cancellation stated in the notice shall become the end of the policy period.

This policy will terminate without any written notice when we pay for a total loss or a constructive total loss.

## III. Return Premium

If this policy is cancelled, you may be entitled to a premium refund. If we cancel the policy, any return premium will be computed on a pro-rata basis. If you cancel the policy, any return premium will be computed on a 90% pro-rata basis. No premium will be returned to you if we have paid you for a total or constructive total loss of the insured vessel. Any return premium will be paid to you as soon as possible after the cancellation.

## IV. Conformity to Statute

Any provision of this policy that conflicts with any state statute or regulation is hereby amended to conform to the minimum requirements of the state statute or regulation.

## V. Liberalization

If we adopt a revision (by applying the revision to all policies issued on or effective after a specific date) that would broaden the coverage in this policy without additional premium within 60 days prior to or during the policy period, the broadened coverage will apply immediately to this policy.

## **GENERAL LOSS CONDITIONS**

These loss conditions apply in addition to any loss condition applicable to a specific coverage or group of coverages:

### I. Claim or Suit Against You

You must immediately notify us and send us every demand notice, summons or other legal papers received by you or your representative, if a claim is made or a suit is brought against you for liability that is covered under this Policy. We will pay the ensuing cost of the suit. We will also have the option of naming attorneys to represent you in the suit. If this is done, we have the sole right to control the defense of the suit.



## II. Notice of Loss

**You** must report immediately to **us** or our authorized agent any accident, loss, damage, or expense which may be covered under this Policy. This report should give full details about when and where the loss occurred, how it happened and the name and address of all the people involved including all witnesses. **You** are required to immediately notify the police of any theft, vandalism or malicious damage to **your** insured property. **You** must also permit us to inspect any damage before repairs are made.

After requested by **us**, **you** must file within ninety (90) days thereof, with us or **our** authorized agent, a written statement about the details of the loss. This statement must be signed and sworn by you. **You** may also be required to submit to an examination under oath. If **you** do not submit the required proof of loss or submit to examination under oath, any claim for such loss under this Policy will be void.

## III. Other Insurance

There may be other insurance which applies to a loss. If so, except as provided with respect to a **nonowned yacht**, the most **we** will pay for the loss will be determined as follows:

- A. First, **we** will add the total applicable coverage limits of all valid and collectible insurance covering the loss.
- B. Second, **we** will determine what percentage **our** coverage limit is of this total.
- C. Finally, **we** will multiply the amount of **your** loss by this percentage. The result is the most **we** will pay for any loss under this policy.

However, with respect to direct physical damage to a **nonowned yacht**, this insurance shall apply only to the extent that the damages for which you become legally liable, including costs, exceed the limits of liability of any other valid and collectible insurance.

#### IV. Legal Action Against Us

A. No suit or action may be brought against us unless there has been full compliance with all terms of this policy.

B. With respect to coverage provided under PROPERTY COVERAGE:

No suit or action may be brought against us unless the action is brought within 12 months (or if this limitation is prohibited by law, the shortest amount of time permitted by law) after the date you first have knowledge of the loss.

C. With respect to all other coverage under this policy:

No can suit be brought against us until the amount of a claim against you has been determined or agreed upon.

Nothing in this policy gives any person or organization the right to join us as defendants in a suit brought against you.

#### V. Premium Fully Earned

We will not return any premium for the insured yacht being laid-up or for cancellation of coverage under any Section of this Policy, if the described yacht or a newly acquired yacht has suffered a total loss or a constructive total loss by a covered cause of loss.

#### VI. Policy Period/Territory

This policy applies only to loss or damage, liabilities incurred by any person, injury or damages or expenses of any type that arise out of an occurrence that takes place:

A. during the policy period; and

B. on land within the United States and Canada, or on land or water within the navigating limits.

#### VII. Right of Recovery:

If a person or organization to or for whom we make payment under this insurance has rights to recover damages from another person or organization, those rights are transferred to us. The person or organization to or for whom we make payment must do everything necessary to preserve our right to recover.

But, you may waive your rights against another party prior to loss or damage by signing hold harmless agreements in:

A. registration forms for sailboat races; or

B. storage or slip rental contracts;

in connection with the ownership of an **insured yacht**.

### DEFINITIONS

Throughout this policy, words and phrases that have special meaning appear in bold. They are defined as follows:

- A. You and your refer to the Named Insured shown on the Declarations Page.
- B. The words we, us and **our** refer to the Company providing this insurance.
- C. **Actual Cash Value** means the replacement cost of the lost or damaged property less depreciation.
- D. Bodily injury means physical injury, sickness or disease sustained by a person including death resulting from any of these.
- E. Constructive total loss means that the cost to recover and/or repair the damaged property will exceed the applicable limit of insurance.
- F. **Employee** includes a leased worker. Employee does not include a temporary worker.
- G. **Insured** means **you** and any person, firm, corporation or legal entity who may be operating the insured yacht with your permission. However, this does not include a paid captain or any paid crew member of the insured yacht.

Nor does it include any person, firm, corporation or other legal entity or any of their agents or employees operating a shipyard, boat repair facility, marina, yacht club, sales agency, boat service station or similar organization.

H. Insured yacht means;

1. the yacht described on the Declarations Page, its spars, sails, tackle, marine electronics (whether or not permanently installed), machinery and fittings which are part of the yacht and which are required to be on the yacht for its safe operation and maintenance while afloat and on shore. It also includes tenders and property temporarily removed from the yacht while on shore; and
  2. a newly acquired yacht if it is the same type as the yacht described on the Declarations Page and is no more than 5 years old. However, coverage as a newly acquired yacht will cease if any of the following occur:
    - a. this policy expires;
    - b. a period of 15 days has passed since you acquired the yacht; or
    - c. you report the new yacht and its values to us with a request for insurance coverage. We will charge you additional premium and amend this policy or we will issue a new policy for your new yacht from the date you purchased the yacht.
- I. Latent Defect** means a flaw in the material of the **Insured Yacht's** hull or machinery existing when the Insured **Yacht** or its components were built and not discoverable by common means of testing. Latent Defect does not include wear and tear, gradual deterioration, corrosion, rust, electrolysis, osmosis, weathering or inherent vice.
- J. Leased Worker** means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. Leased worker does not include a temporary worker.
- K. Marine electronics** means electronic devices designed specifically for marine navigation or marine communication.
- L. Navigating limits** means the area described on the Declarations Page for 'Navigating Limits'.
- M. Newly acquired yacht** means a yacht that you purchase during the policy period.
- N. Nonowned yacht** means any inboard motorboat or sailboat which is not owned in whole or in part by you or by any resident of your household which is being used by you with the permission of the boat owner. However, a nonowned yacht does not include any boat which is hired or rented by you or made available for your regular use. It includes its spars, sails, tackle, machinery and fittings which are part of the boat and which are required to be on the boat for its safe operation and maintenance while afloat and on shore. It also includes tenders; and property temporarily removed from the boat while on shore.
- O. Occurrence** means a single event or an accident or series of accidents caused by a single event.
- P. Property damage** means damage to or loss of use of tangible property.
- Q. Tender** means any auxiliary boat whose main purpose is to service the insured yacht for purposes of delivering supplies or ferrying passengers to and from shore.
- R. Temporary Worker** means a person who is furnished to you to substitute for a permanent employee on leave or to meet seasonal or short-term workload conditions.

There are additional words that have special meaning with respect to specific coverages. These words are defined within the section describing the coverage.

This Policy is Signed at the Home Office of the Company by it's president and secretary.

**MARKEL AMERICAN INSURANCE COMPANY**

Glen Allen, Virginia

Gregory B. Nevers  
Secretary

Britton L. Glisson  
President

**MARKEL INSURANCE COMPANY**

Glen Allen, Virginia

Gregory B. Nevers  
Secretary

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Britton L. Glisson  
President

**Administrative Office:  
P0 Box 906  
Pewaukee, WI 53072-0906  
800-806-9626**

# Attachment 4



Policy Number	Policy Period
I YH8626311-55	
Name of Insured:	
<b>From:</b> 11/09/2003	<b>To:</b> 11/09/2004
CREWS, THOMAS	<b>226001</b>
	<b>Effective:</b> 11/09/2003

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

#### **GENERAL AMENDATORY ENDORSEMENT**

This endorsement modifies insurance provided under the following:

THE HELMSMAN YACHT POLICY

Paragraph 3 under USE OF YOUR **YACHT** is deleted in its entirety and replaced with the following:

3. While on land, the insured yacht may be transported overland on its trailer. However, it may not be transported more than 350 total miles overland by a contract or common carrier. The insured yacht may not be transported as waterborne cargo.

Part 3. Exclusions, of Paragraph A. Hull Coverage(Including Tenders), of I. Coverage, under **PROPERTY COVERAGE** is deleted in its entirety and replaced with the following:

3.Exclusions - The following apply in addition to the **GENERAL EXCLUSIONS**:

We will not pay for loss, damage or expense caused by or resulting from:

- a. wear and tear, gradual deterioration, inherent vice, electrolysis, marring, denting, scratching, weathering, osmosis or blistering of fiberglass, resin or gelcoat or willful misconduct of an **insured**;
- b. failure to maintain the insured yacht (including its machinery and equipment) in good condition so that the insured yacht cannot be damaged by ordinary weather or water conditions or the rigors of normal use;
- c. manufacturer's defects or defects in design.

However, if the loss or damage has not resulted from the negligence of any insured, this exclusion does not apply to loss, damage or expense directly caused by explosion, bursting of boilers, breakage of shafts or any **latent** defect in the hull or machinery (excluding the cost and

expenses of replacing or repairing the defective part);

Paragraph A. Insuring Agreement, of I. Coverage, under **UNINSURED AND UNDERINSURED BOATER** is deleted in its entirety and replaced with the following:

A. Insuring Agreement

1. We will pay all sums a **covered person** is legally entitled to recover as damages from the owner or operator of an uninsured or underinsured boat that is not an insured yacht or a nonowned yacht. The damages must result from bodily injury caused by an occurrence, sustained by the covered person while onboard the **insured** yacht. The owner's or operator's liability for these damages must result from the ownership, maintenance or use of the uninsured or underinsured boat that is not an insured yacht or a nonowned yacht.
2. If an underinsured boat causes the bodily injury, we will pay only after all other liability bonds or policies have been exhausted by judgments or payments.



Number	YH 8626311-55	Name of Insured: CREWS, THOMAS
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The following is appended to **GENERAL LOSS CONDITIONS**:

.1 VIII. Appraisal

In the event that You or **We** dispute the amount of Your loss, either may demand an appraisal in writing. If You or **We** demand an appraisal, You and **We** shall each appoint and pay a competent and disinterested appraiser. If the two appraisers cannot agree on the amount of the loss, the appraisers or a judge of local court of record shall select an umpire who shall decide any differences. An award in writing by any two such persons shall determine the amount of Your loss. You and We will be bound by that amount.

You will pay the appraiser You choose and We will pay the appraiser **We** choose. The expense of the umpire and all other expense of the appraisal will be shared equally by You and **Us**

.2 IX. Arbitration

In the event that You or We disagree concerning whether any or all of the loss is covered by the policy, You and We will resolve this disagreement through arbitration. Arbitration will take place in the county where You live. It will be conducted under the rules of the American Arbitration Association unless We or You object. In that case, You will select an arbitrator and We will select another arbitrator. The two selected arbitrators will then select a third. If the two arbitrators are unable to agree on the third arbitrator within 30 days, the judge of the court of record in the county of jurisdiction where arbitration is pending will appoint a third arbitrator.

Local court rules governing procedure and evidence will apply unless the arbitrators agree on other rules. The decision in writing of any two arbitrators will be binding on You and Us, subject to the terms of this insurance. Judgment on any award may be entered in any court having jurisdiction.

You will pay the arbitrator that You choose and We will pay the arbitrator **We** choose. The expense of the third arbitrator and all other expense of the arbitration will be shared equally by You and **Us**.

YH 8626311-55 From: 11/09/2003 To: 11/09/2004 226001

Name of Insured: CREWS, THOMAS Effective: 11/09/2003

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**AUTOMATIC FIRE EXTINGUISHER REQUIREMENT**

This endorsement modifies insurance provided under the following:

THE HELMSMAN YACHT POLICY

**You** agree that the insured yacht is equipped with a built-in fire extinguishing apparatus, properly installed in the engine room and maintained in good and efficient working order; and the tanks of said system will be weighed and recharged, if necessary, at least once every year.

M YHBP 83 01 02 00 The Helmsman Yacht Policy 10/8/2003 Page 1 of 1

Name of Insured:		
Policy Number	Policy Period	
YH 8626311-55	From: 11/09/2003	To:
11/09/2004		226001
	CREWS, THOMAS	Effective:
11/09/2003		

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL NAVIGATION RESTRICTIONS**

This endorsement modifies insurance provided under the following:

THE HELMSMAN YACHT POLICY

WARRANTED NOT SOUTH OF SAVANNAH, GA, AND NO GULF  
NAVIGATION BETWEEN JUNE 1 & NOVEMBER 1, BOTH DATES  
INCLUSIVE.

M YHBI 99 01 06 99

The Helmsman Yacht Policy

10/8/2003 Pag